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ATTORNEYS FOR DEFENDANTS  
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ATTORNEYS OF RECORD:  
FELICE B. EKELMAN (FE 5692)  
JOANNA S. SMITH (JS 6471)

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X  
TYLER WALZ, STEPHEN STACY a/k/a  
STEVE STACY, FORREST BAYLESS,  
MARCUS CALDERON, DANNY MARR,  
Each Individually And On Behalf Of All  
Other Persons Similarly Situated,

Plaintiffs,

-against-

44 & X incorporated as 10<sup>th</sup> AVENUE  
GROUP, INC., SCOTT HART Individually,  
and BRUCE HOROWYTZ a/k/a BRUCE  
HOROWITZ, Individually,

Defendants.

Civ. No.: 12 CIV 5800 (CM)(AJP)

-----X  
**DECLARATION OF FELICE B. EKELMAN, ESQ. IN SUPPORT OF  
DEFENDANTS' MOTION TO ENFORCE THE SETTLEMENT  
AGREEMENT**

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the following  
is true and correct:

1. I am a member with the law firm Jackson Lewis LLP, attorneys of record for  
Defendants 44 & X incorporated as 10<sup>th</sup> Avenue Group, Inc., Scott Hart and Bruce Horowitz  
a/k/a Bruce Horowitz ("Defendants") in connection with the above-captioned action. As such, I

am fully familiar with the facts set forth herein. I make this Affirmation in support of Defendants' Motion to Enforce the Settlement Agreement.

2. On May 8, 2013, Plaintiffs' counsel informed the Court that the parties had reached a settlement in principle in the instant action. (See Docket No. 86).

3. On May 15, 2013, the Parties were ordered to file their settlement agreement and related papers no later than June 7, 2013. (Docket No. 89).

4. On June 6, 2013, pursuant to the consent of the Parties, Judge Colleen McMahon assigned the case, for settlement purposes, to Magistrate Judge Andrew J. Peck. (Docket No. 90).

5. On June 6, 2013, Magistrate Judge Peck dismissed Plaintiff Forrest Bayless with prejudice. (Docket No. 91).

6. Between the dates of June 19, 2013, and June 20, 2013, all four remaining Plaintiffs, Tyler Walz, Marcus Calderon, Steven Stacy and Danny Marr, executed the Settlement Agreement. (See Docket No. 96-1).

7. On June 20, 2013, all Defendants executed the Settlement Agreement. (See Docket No. 96-1).

8. On June 20, 2013, Plaintiffs submitted their Motion for the Preliminary Approval of Class Action Settlement, attaching the executed Settlement Agreement and requesting the Court's Approval of the same. (See Docket Nos. 94-96).

9. On June 21, 2013, Magistrate Judge Peck conducted a telephone conference with the Parties to discuss the terms of the settlement.

10. During the June 21, 2013 teleconference, Magistrate Judge Peck advised the Parties that Plaintiffs' attorneys' fees and the enhancement payments for Plaintiffs sought in the

Settlement Agreement, could be affected by the number of putative plaintiffs who participate in the settlement.

11. By correspondence to the Court on July 2, 2013, Plaintiffs asserted that the Settlement Agreement was not binding. (Docket No. 100).

12. During the Parties' appearance before Magistrate Judge Peck on July 9, 2013, the Court directed that Defendants file the instant Motion to Enforce the Settlement Agreement pursuant to the schedule set forth during that conference.

13. I have read the above-numbered paragraphs, and confirm the same are true and correct to the best of my knowledge and belief.

Dated: New York, New York  
July 30, 2013

S/ Felice B. Ekelman  
Felice B. Ekelman, Esq. (FE 5692)  
JACKSON LEWIS LLP  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of July 2013, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Southern District's Local Rules, and/or the Southern District's Rules on Electronic Service upon the following parties and participants:

WALKER G. HARMAN, JR.  
PETER J. ANDREWS  
THE HARMAN FIRM, PC  
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S/ Joanna S. Smith  
Joanna S. Smith, Esq.